

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO: 0:22-CV-61553-WPD

CRUZ VALDIVIESO FIGUERA,

Plaintiff,

vs.

**ALL VIP CARE, INC., &
LIZ VELAZQUEZ McKINNON,**

Defendants.

/

**DEFENDANTS' MOTION LEAVE FOR WITNESS ANGELA MELENDEZ TO APPEAR
TELEPHONCALLY OR BY ZOOM AT TRIAL**

The Defendants in accordance with Rule 43 of Fed. R. Civ. P. et al., and Local Rule 7.1, file this Motion to For Leave for Witness Angela Melendez to Appear Telephonically or by Zoom for Trial and in support thereof states:

1. Angela Melendez is a material witness in the present action.
2. Angela Melendez was served with a subpoena for trial in this matter for the trial period beginning October 23, 2023 through and including November 3, 2023.
3. Angela Melendez informed the undersigned that due to a recent fall she has been ordered to bed rest by her physician.
4. The Defendants request that Angela Melendez be allowed to appear by telephone or by way of Zoom for this trial.
5. This granting of this request will not prejudice the Plaintiff; however if Angela Melendez was not allowed to appear at trial via telephone or by a Zoom type platform, then the Defendants would be significantly prejudiced in the trying of this case.

Memorandum of Law

6. Rule 43 of the Fed. R. Civ. P., states in pertinent part,

“(a) IN OPEN COURT. At trial, the witnesses’ testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.” (emphasis added.)

7. In a recent Southern District case *BluestarExpo Inc. v. Enis*, No.21-20875-Civ-Scola (S.D. Fla., Oct.17, 2022), the Court explained that a compelling circumstance is an unexpected circumstance — an accident or illness that prevents the witness from traveling to the courthouse.¹ *Id.*

8. In the case at bar the circumstances that give rise this motion were not expected or anticipated and are compelling, the reason was that the witness, suffered a fall that requires bed rest per her physician.

WHEREFORE the Defendants requests that this Court grant this motion and allow Angela Melendez to appear by telephone or by way of zoom; together with whatever further relief that this Court deems to be fit and proper.

CERTIFICATIONS

1. I certify that in accordance with Local Rule 7.1(3) prior to the filing of this motion the Defendants conferred with the Plaintiff about the relief requested in this motion. The Plaintiff refused to consent to the entry of an agreed order regarding this motion.

¹ In Bluestar Expo, the compelling circumstance proffered by the plaintiff was that two of its witnesses simply refused to travel from their homes (upstate New York, and Turkey) to the Southern District of Florida. Mere inconvenience doesn’t satisfy Rule 43(a), the court held. “The difficulties in procuring in-person testimony here were all reasonably foreseeable.”

2. I hereby certify that a copy of this pleading which was filed with the Clerk of the Court and was provided to: **Brian Howard Pollock, Esquire**, Fairlaw Firm, 135 San Lorenzo, Avenue, Suite 770, Coral Gables, FL 33146, Brian@fairlawattorney.com; and all attorneys listed on and via the ECM System on **October 17, 2023**.

/s/ RANDY M. GOLDBERG, ESQUIRE
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